

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Investigation Regarding Intrastate Access :
Charges and IntraLATA Toll Rates of Rural :
Carriers and the Pennsylvania Universal : I-00040105
Service Fund :

**ORDER DISPOSING OF THE MOTIONS TO COMPEL FILED BY THE
OFFICE OF CONSUMER ADVOCATE AND VERIZON AGAINST THE
PENNSYLVANIA TELEPHONE ASSOCIATION AND EMBARQ**

On December 20, 2004, the Pennsylvania Public Utility Commission (Commission) entered an Order instituting this proceeding to investigate whether to implement further access charge reductions and intraLATA toll rate reductions in the service territories of rural incumbent local exchange carriers (RLECs). The investigation was stayed pending the outcome of a parallel federal investigation which was expected to impact the PUC's own investigation, or until further consideration.

By Order entered April 24, 2008, the Commission reopened the matter docketed at I-00040105 and directed that the Office of Administrative Law Judge conduct appropriate proceedings to carry out the following:

1. To address whether the cap of \$18.00 on residential monthly service rates and any corresponding cap on business monthly service rates should be raised, whether funding for the Pennsylvania Universal Service Fund should be increased, and whether or not a "needs based" test (and applicable criteria) for rural ILEC support funding from the PaUSF in conjunction with the federal USF support payments that the rural ILECs receive should be established in order to determine which rural ILECs qualify for PaUSF funding as described in the body of the April 24, 2008 Order; and
2. That the proceedings also address the following issues:

(a) Whether the Commission has the authority under Chapter 30 and other relevant provisions of the Public Utility Code to perform a just and reasonable rate analysis of the rural ILECs' residential rates for basic local exchange services when such rates exceed the appropriate residential rate benchmark.

(b) The appropriate benchmark for the rural ILEC residential rate for basic local exchange service taking into account the statutory requirements for maintaining and enhancing universal telecommunications services at affordable rates. Participating parties are encouraged to submit appropriate studies and testimony, including economic cost studies that can provide the necessary information for the establishment of the appropriate residential benchmark rate for maintaining and enhancing universal telephone service goals in Pennsylvania.

(c) Whether PaUSF funding support should be received by rural ILECs that incrementally pierces the appropriate residential rate cap because of the regular annual Chapter 30 revenue increases, and whether the Commission's PaUSF regulations at 52 Pa. Code § 63.161 et seq. should be accordingly revised. The relevant inquiry should include the role of non-expired "banked revenues" that rural ILECs may have accumulated through the operation of their respective Chapter 30 modified alternative regulation plans and corresponding price stability mechanisms.

(d) Whether the potential availability of PaUSF support distributions to those rural ILECs that pierce the appropriate residential rate cap because of their respective annual Chapter 30 annual revenue increases has any anti-competitive or other adverse effects, especially with respect to the currently established PaUSF support contribution mechanism and its participating telecommunications utility carriers.

(e) The "needs based" test should address the following interlinked areas that involve the operations of the rural ILECs:

- (i) The Chapter 30 annual rural ILEC price stability mechanism revenue increases;
- (ii) The annual federal USF support that the Pennsylvania rural ILECs receive;
- (iii) The fact that most of the Pennsylvania rural ILECs are “average schedule” telephone utility companies that do not jurisdictionalize a number of revenue, expense, and asset parameters for their regulations operations;
- (iv) Whether there is any relevance that rural ILEC assets and facilities may be used both for the provision of regulated intrastate telecommunications services, but also for the provision of non-jurisdictional services that potentially include unregulated services;
- (v) Whether the overall financial health of the rural ILECs that continue to get both PaUSF and federal USF support should play a role for continuing to receive PaUSF support distributions; and
- (vi) Whether the PaUSF level of support distributions to the recipient rural ILECs should be adjusted in relation to the revenue increases in local exchange rates that have been or are implemented through their respective Chapter 30 modified alternative regulation plans and price stability mechanisms.

The Order also directs that the Recommended Decision in this matter be issued within twelve (12) months of the entry date of the order, April 24, 2008.

On May 30, 2008, a Notice of prehearing conference was issued and served to those entities served with the Commission’s April 24, 2008 Order. I issued a Prehearing Order which directed those entities wishing to participate to file an entry of

appearance. Those who entered appearances would comprise the service list for the remainder of this portion of the reactivated case.

Entries of appearance were filed by Sprint Communications Company, L.P. (Sprint); the Office of Consumer Advocate (OCA); Cellco Partnership d/b/a Verizon Wireless (Verizon Wireless); Verizon Pennsylvania Inc., Verizon North Inc. and MCImetro Access Transmission Services, LLC d/b/a Verizon Access Transmission Services, LLC (Verizon); Rural Telephone Company Coalition (RTCC); AT&T Communications of Pennsylvania, LLC, TCG Pittsburgh, Inc. and TCG New Jersey, Inc. (AT&T); Office of Small Business Advocate (OSBA); The United Telephone Company of Pennsylvania LLC d/b/a Embarq Pennsylvania (Embarq); Omnipoint Communications Inc. d/b/a T-Mobile, Omnipoint Communications Enterprises LLC d/b/a T-Mobile and VoiceStream Pittsburgh LP d/b/a T-Mobile (T-Mobile).

Prehearing memos were filed by these same entities as well as the Broadband Cable Association of Pennsylvania (BCAP), and Comcast Phone of Pennsylvania LLC d/b/a Comcast Digital Phone and Comcast Business Communications (Comcast). The Prehearing Conference was held as scheduled on June 18, 2008, and each entity was represented by counsel. Numerous matters were considered, as indicated in the following discussion.

On March 10, 2008, Comcast filed a Petition to Intervene, alleging that it is impacted by the rates charged for access by RLECs and is also a contributor to the PaUSF. No objections or responses were filed, and it was granted as unopposed. On June 17, 2008, a Motion for Admission Pro Hac Vice was filed by Deanne M. O'Dell, Esq. for John C. Dodge, Esq. The Motion was unopposed at the prehearing conference and was granted.

A Petition to Intervene was filed by BCAP on June 6, 2008. At the prehearing conference, no party indicated opposition, and the petition was granted.

On June 11, 2008, a Motion to Substitute a Representative Organization was filed jointly by the RTCC and the Pennsylvania Telephone Association (PTA) seeking to substitute the PTA for the RTCC, which had previously been involved in the case. The Motion indicates, and counsel confirmed at the prehearing conference, that the PTA and RTCC sought to have the PTA take over the representation of thirty-one companies.¹ Counsel for the PTA stated that the PTA has agreed to take discovery for all thirty-one companies, and that the responses will be those of the individual companies.

On June 17, 2008, a Motion for Admission Pro Hac Vice was filed by Sue Benedek, Esq., for Joseph R. Stewart, Esq. At the prehearing conference, no party indicated opposition, and the petition was granted.

The parties agreed to a procedural schedule, which was adopted by the Scheduling Order, and subsequent Amended Scheduling Order dated June 24, 2008.

All parties agreed to electronic service of discovery, answers and briefs on the due date prior to 4:00 pm, followed by hard copy. Parties shall use overnight mail if the electronic copy omits exhibits or attachments.

In addition, the parties were informed that they would be expected to file briefs according to a uniform outline. They may develop a joint outline or submit individual proposals, but their initial suggestions are due with the direct testimony. The outline is not meant to limit the subject matter of the evidentiary presentations but to

¹ The list includes: Armstrong Telephone Company – PA; Armstrong Telephone Company – North; Bentleyville Telephone Company; Buffalo Valley Telephone Company; Citizens Telecommunications Company – New York; Citizens Telephone Company of Kecksburg; Commonwealth Telephone Company LLC d/b/a Frontier Communications Commonwealth Telephone Company; Frontier Communications of Breezewood, LLC; Frontier Communications of Canton, LLC; Frontier Communications of Lakewood, LLC; Frontier Communications of Oswayo River, LLC; Frontier Communications of PA, LLC; Conestoga Telephone & Telegraph Company; Denver and Ephrata Telephone and Telegraph Company; Hickory Telephone Company; Ironton Telephone Company; Lackawaxen Telecommunications Services; Laurel Highland Telephone Company; TDS Telcom/Mahanoy & Mahantango Telephone Company; Marianna and Scenery Hill Telephone Company; The Northeastern PA Telephone Company; North Penn Telephone Company; Consolidated Communications of PA Company; Palmerton Telephone Company; PA Telephone Company; Pymatuning Independent Telephone Company; South Canaan Telephone Company; TDS Telcom/Sugar Valley Telephone Company; Venus Telephone Corporation; Windstream PA, LLC., and Yukon-Waltz Telephone Company.

facilitate it. If the parties cannot agree upon an outline, they will be given one at or shortly after the evidentiary hearings. With eleven active parties and four weeks to produce a recommended decision, this type of ruthless organization is essential. Briefs which do not follow the outline will not be as easy to reference, thus reducing my ability to rely on them in formulating my recommendation.

A protective order was issued prior to the stay of the case and remains in effect.

Discovery disputes have arisen, and both Verizon and the OCA filed Motions to Compel against both Embarq and the PTA. This Order disposes of all four motions. In addition, AT&T requested that the Answers filed by Embarq and PTA be disregarded as untimely. By e-mail on Wednesday, August 6, 2008, followed by hard copy service of the notice, the parties were informed that oral argument would be held on August 12, 2008 to discuss the motions. By Order issued August 8, 2008, the AT&T request to disregard the answers as untimely was denied.

Oral argument was held as scheduled, with all parties afforded an opportunity to weigh in regarding the subject matter. The Order of August 20, 2008, disposed of the motions, and On August 26, 2008, Embarq and PTA filed a Joint Petition Requesting Certification of a Material Question to the Commission. On September 2, 2008, OCA filed a Response opposing the Joint Petition, and the Joint Petitioners filed a Joint Brief in Support of the Joint Petition. By Order dated September 3, 2008, I denied the request.

Somebody filed to stay the proceeding, somebody tried to take an interlocutory appeal – figure this out.

On September 17, 2008, Comcast filed two motions to compel, one against PTA and the other against Embarq. On September 24, 2008, PTA and Embarq filed their Answers.

On September 24, 2008, the Commission voted to grant the requests of PTA and Embarq to extend this proceeding for two months in order to permit the FCC to comply with a court order requiring them to issue a decision in a relevant matter by November 1, 2008². *Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and the Pennsylvania Universal Service Fund*, PUC Docket No. I-00040105 (Order entered September 25, 2008). The procedural schedule in this case will be adjusted in a separate order.

This Order disposes of the Motions to Compel.

DISCUSSION

The standard for permissible discovery is in the Commission's regulations:

§ 5.321. Scope.

(a) *Applicability.* This subchapter applies to a proceeding in which:

* * *

(2) The Commission institutes an investigation.

* * *

(b) *Discretion.* The presiding officer may vary provisions of this subchapter as justice requires.

(c) *Scope.* Subject to this subchapter, a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of another party, including the existence, description, nature,

² On July 8, 2008, the U.S. Court of Appeals for the District of Columbia Circuit directed the FCC to issue a final, appealable order on or before November 5, 2008, which explains the statutory basis for its interim compensation plan for traffic bound for Internet Service Providers. *In re: Core Communications, Inc.*, No. 097-1446, slip op. at 24 (D.C. Cir. July 8, 2008).

content, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of a discoverable matter. It is not ground for objection that the information sought will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

* * *

52 Pa. Code § 5.321(a)-(c).

It is important to remember that the material sought to be discovered need not be admissible. Rather, it must be reasonably expected to lead to the discovery of admissible evidence. The limitations are broad:

§ 5.361. Limitation of scope of discovery and deposition.

(a) Discovery or deposition is not permitted which:

- (1) Is sought in bad faith.
- (2) Would cause unreasonable annoyance, embarrassment, oppression, burden or expense to the deponent, a person or party.
- (3) Relates to matter which is privileged.
- (4) Would require the making of an unreasonable investigation by the deponent, a party or witness.

* * *

52 Pa. Code § 5.361.

Matter which is privileged is not excluded in this case since there is a protective order in place to protect the responding party. In addition, this Commission-instituted investigation is not a rate proceeding within the meaning of Section 5.361(b), and the claim that the information is not kept in the format requested, in the normal course of business or because the discovery request requires that the answering party

make a special study or analysis when, as here, the requesting party cannot perform the study or analysis since the necessary information is in the hands of the telephone companies is not applicable here. Therefore, the reasons remaining are that the information requested would cause unreasonable annoyance, embarrassment, oppression, burden or expense to the deponent, a person or party. 52 Pa. Code § 5.361(a)(2).

Comcast moves to compel responses to its First Set of Data Requests I-1-10 served upon the PTA and Embarq. Comcast I-1 and I-2 will be discussed together:

Comcast I-1: State whether the responding Company or any affiliated company, in any of the last five years (2003 to 2007), offered service other than regulated telephone services over facilities owned or controlled by the Responding Company that are also used to provision regulated telephone services.

PTA Objection: The PTA objects to this interrogatory to the extent it requests information from “any affiliated company.” Discover directed to non-parties, which may offer services in competition with Company, is sought in bad faith, irrelevant, outside the scope of this proceeding, and not reasonably calculated to lead to the discovery of admissible evidence. The PTA also objects to a request for data going back to 2003 as overbroad and causing unreasonable annoyance, oppression, burden, and expense to respond. A response involving current practices should be sufficient.

The PTA asks Comcast to review its response to Verizon Set I-32 and advise the PTA whether this is satisfactory to address Comcast’s inquiry.

Embarq Objection: The requested information for the years 2003 and 2004 is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

Comcast I-2: If the response to Interrogatory 1 above is yes, state whether the Responding Company or an affiliated company, in any of the last five years (2003-2007), derived revenues from such services, other than regulated telephone services, which also use or rely on facilities owned or controlled by the Responding Company that are used to provision regulated telephone services.

PTA Objection: The PTA objects to this interrogatory to the extent it requests information from “any affiliated company.” Discovery directed to non-parties, which may offer services in competition with Comcast, is sought in bad faith, irrelevant, outside the scope of this proceeding, and not reasonably calculated to lead to the discovery of admissible evidence. The PTA also objects to a request for data going back to 2003 as overbroad and causing unreasonable annoyance, oppression, burden, and expense to respond. A response involving current practices should be sufficient

Moreover, the PTA member companies have set forth substantial information regarding revenue in response to Verizon Set I-2 and I-17, which provide the last three years of PSI/SPI reports and annual reports, as well as total company income and balance sheets. The PTA member companies ask that Comcast review this information to determine whether it satisfies Comcast’s inquiry.

Embarq Objection: See. Embarq PA objection to Comcast I-1.

Comcast states that it is seeking information relating to unregulated services that Embarq and the PTA companies sell which rely on regulated facilities in order to determine whether PaUSF support “properly recognizes revenues and expenses associated with unregulated services that use regulated facilities.” Comcast Motions, p. 2. As its authority for asking for this information, Comcast cites the Commission’s April 24, 2008 Order reopening this docket, which asks:

2.(e)(iv) Whether there is any relevance that rural ILEC assets and facilities may be used for both the provision of regulated intrastate telecommunications services, but also for the provision of non-jurisdictional services that potentially include unregulated services;
And

2.(e)(v) Whether the overall financial health of the rural ILECs that continue to get both PaUSF and federal USF support should play a role for continuing to receive PaUSF support distributions.

Comcast argues that revenue data for affiliates is important because “if the PTA member companies’ revenues from unregulated services has grown substantially in the last few years, this may indicate a growth trend, which if continued, would eliminate

any need for funding from the PaUSF.” Comcast Motions, ¶15, p. 7. Embarq answers that its profit from unregulated services should have no bearing on the amount of contribution Embarq receives from the PaUSF.” Embarq Answer, p. 4.

Although Embarq objects to Comcast I-1 and I-2, it also indicates that it will provide responses. Since the discovery rules in effect for this case provide that either an objection or an answer will be provided, the answer appears to be a withdrawal of the objection for these two interrogatories.

The PTA argues that the Commission’s investigation does not support discovery of non-party affiliates. The examination of whether there is any relevance that RLEC assets may be used to provide nonregulated services cannot be used as a legal basis to expect discovery from the non-party affiliates, who have not been joined as indispensable parties. “Discovery upon them for the production of very specific data regarding their revenues, and their revenue and cost allocations, under the guise that such information is directly responsive to the Commission inquiries in Ordering Paragraphs 2(e)(iv) and (v) overstates the subject of the Commission’s inquiry.” PTA Answer, pp. 7-8.

As PTA points out, “The subject of the Commission’s inquiries in Ordering Paragraphs 2(e)(iv) and (v) is to assess whether it is relevant that there may be joint use of facilities for the provision by the RLECs of jurisdictional and non-jurisdictional services and what the overall financial health of the RLECs is. It is neither to develop the specific parameters of a needs-based test, nor to “confirm PTA affiliates’ revenue and expense accounting with respect to unregulated services that use regulated facilities.” PTA Answer, ¶ 18, p. 8, quoting Comcast Motion to Compel at 4, ¶8. PTA is correct. Comcast’s Motions to Compel information regarding RLEC affiliates are denied.

Comcast I-3: if the response to Interrogatory 2 above is yes, state the Pennsylvania gross revenue for each of the last five years (2003-2007), that the Responding

Company or an affiliated Company derived from services, other than regulated telephone services, which also use or rely on facilities owned or controlled by the Responding Company that are used to provision regulated telephone services.

PTA Objection: The PTA all objects to a request for data going back to 2003 as overbroad and causing unreasonable annoyance, oppression, burden, and expense to respond. The PTA also objects to the request for revenue data from non-regulated services as irrelevant, outside the scope of this proceeding, and not reasonably calculated to lead to the discovery of admissible evidence.

Finally, PTA objects to this interrogatory to the extent it request information from “any affiliated company” for the reasons stated in the PTA’s objections to Interrogatory nos. 1 and 2.

Further, the PTA member companies ask about Comcast first reviewed the responses to Verizon Set I-2 and I-17, which provide the last three years of PSI/SPI reports and annual reports, as well as total company income and balance sheets, and determine whether this response satisfies Comcast’s inquiry.

Embarq Objection: *See*, Embarq PA objection to Comcast I-1. Embarq PA objects ask the question imposes duties beyond those required by the Pennsylvania Public Utility Code and the Commission’s regulations. In addition, a response to this question will require Embarq PA to undertake a special study or unreasonable investigation and would therefore be unduly burdensome and oppressive to complete.

Comcast justifies its request by noting “that the need for historical data is to demonstrate the level of unregulated revenues over time, which revenues can be compared to PTA member companies’ claimed PaUSF revenue requirement during that same period. This information may be predictive of future trends and thus future draws on the PaUSF.” Comcast Motions to Compel at 10, ¶26.

PTA points out that the affiliates are separate entities from the RLECs, which are the subject of this investigation. Information regarding the affiliates’ data is irrelevant. In addition, the time period is overbroad and exceeds the three-year time

period for which PTA has been providing data in response to Verizon interrogatories. This interrogatory requests information that is not relevant to the investigation, does not lead to the discovery of admissible evidence, requires the making of an unreasonable investigation by the PTA Companies and would require the undertaking of a special analysis. PTA Answer, at 10-11, ¶27.

Embarq echoes the protest that the information is not kept in the format requested, contrary to Comcast's speculation. Embarq objects to performing a special study in order to answer this interrogatory. Embarq Answer at 5.

PTA Companies have already provided substantial information pursuant to other interrogatories, and the information sought here is not justified. Therefore, for the reasons given by PTA, the Comcast Motions to Compel Interrogatory I-3 is denied.

Comcast I-4: If the response to Interrogatory to above is yes, state the Pennsylvania gross revenue for the last five years (2003-2007) that the Responding Company or an affiliated Company derived from any and all services that bundle local exchange service with unregulated services, which use or rely on facilities owned or controlled by the Responding Company or an affiliated company that are used to provision regulated telephone services.

PTA Objection: The PTA objects to a request for data going back to 2003 as overbroad and causing unreasonable annoyance, oppression, burden and expense to respond. The information is not maintained by the companies and would require a special study on a customer-by-customer basis. The PTA also objects to the request for revenue data for local exchange service bundled with unregulated services as irrelevant, outside the scope of this proceeding, and not reasonably calculated to lead to the discovery of admissible evidence.

Finally, the PTA objects to this interrogatory to the extent it request information from "any affiliated company" for the reasons stated in the PTA's objections to Interrogatory Nos. 1 and 2.

Embarq Objection: See, Embarq PA objection to Comcast I-3.

Comcast's phraseology for this interrogatory is nothing short of confusing. It seeks the gross revenue for the last five years derived from any and all services that bundle local exchange service with unregulated services relying on facilities owned or controlled by the Responding Company or an affiliated company that are also used to provision regulated telephone services. Since it seeks information regarding affiliates, it is denied.

Comcast I-5: If the response to Interrogatory 2 above is yes, state the revenue collected from Pennsylvania customers, by service or class of service for the last five years (2003-2007) that the Responding Company or an affiliated company, derived from any and all services other than local exchange service which use or rely on facilities owned or controlled by the Responding Company or an affiliated company that are used to provision regulated telephone services.

PTA Objection: The PTA objects to a request for data going back to 2003 as overbroad and causing unreasonable annoyance, oppression, burden and expense to respond. The request for revenues "by service" is highly burdensome. The information is not maintained by the companies and would require a special study on a customer-by-customer basis. The PTA also objects to the request for revenue data by service or class as irrelevant, outside the scope of this proceeding, and not reasonably calculated to lead to the discovery of admissible evidence.

Finally, the PTA objects to this interrogatory to the extent its request information from "any affiliated company" for the reasons stated in the PTA's objections to Interrogatory nos. 1 and 2.

If "class of service" means revenue category, then the PTA member companies ask about Comcast review the PTA member companies' responses to Verizon Set I-2 and I-17, which provide the last three years of PSI/SPI reports and annual reports, as well as total company income and balance sheets, aunts determine whether this information is sufficient to address Comcast inquiry.

Embarq Objection: See, Embarq PA objection to Comcast I-3.

The Responding Companies shall provide three years' of revenue collected from Pennsylvania customers that the Responding Company derived from any and all services other than local exchange service which use or rely on facilities owned or controlled by the Responding Company used to provision regulated telephone services.

Comcast I-6: If the response to Interrogatory 2 above is yes, state the revenue collected from Pennsylvania services, by bundle or package of services for the last five years (2003-2007) that the Responding Company or an affiliated company, derived from any and all bundled or packaged services which use or rely on facilities owned or controlled by the Responding Company or in affiliated companies that are used to provision local exchange service.

PTA Objection: The PTA objects to a request for data going back to 2003 as overbroad and causing unreasonable annoyance, oppression, burden, and expense to respond. The information is not maintained by the companies and would require a special study on a customer-by-customer basis. The PTA also objects to the request for revenue data by bundle or packaged as irrelevant, outside the scope of this proceeding, it's not reasonably calculated to lead to the discovery of admissible evidence.

Finally, the PTA objects to this interrogatory to the extent it request information from "any affiliated company" for the reasons stated in the PTA's objections to Interrogatory Nos. 1 and 2.

Embarq Objection: See, Embarq PA objection to Comcast I-3.

Information regarding bundled or packaged services is beyond the scope of this investigation.

Comcast I-7: If the response to Interrogatory 4 discloses that the Responding Company offers and receives revenues from bundled services, explain the methods and provide the formulas used to allocate revenues from bundled services between regulated and nonregulated accounts of the Responding Company or any affiliate.

PTA objection: The PTA objects to the request for the methods and formulas used to allocate revenues from

bundled services between regulated and non-regulated services as irrelevant, outside the scope of this proceeding, and not reasonably calculated to lead to the discovery of admissible evidence.

Finally, the PTA objects to this interrogatory to the extent it request information from “any affiliated company” for the reasons stated in the PTA’s objections to Interrogatory Nos. 1 and 2.

The PTA member companies state that there are various methods for booking revenues received from bundled services into the appropriate revenue categories (e.g., toll, local, DSL, etc.). These vary from company to company.

Embarq Objection: See, Embarq PA objection to Comcast I-3.

It is unlikely that the Commission sought to set up the parties as auditors for each others’ books. Embarq states that it will provide a supplemental response to this Interrogatory. PTA points out that the issue of whether RLEC assets and facilities are used to provide regulated and non-jurisdictional services is legitimate, and that it has already provided responses to similar interrogatories promulgated by Verizon. The issue of whether the revenues from unregulated services are properly apportioned across regulated and unregulated accounts is not relevant. PTA Answer at 17 ¶45.

PTA has already provided sufficient responses to the inquiry, and the Comcast Motion to Compel Interrogatory I-7 is denied.

Comcast I-8: State what structural, non-structural or other methods the Responding Company uses to allocate direct, indirect, joint and common or any other costs of Pennsylvania facilities owned or controlled by the Responding Company that are used to provision both regulated in nonregulated services.

PTA objection: The PTA objects to this interrogatory for the reasons stated in the PTA’s objection to Comcast I-7.

The FCC’s Part 64 controls how expenses are allocated between regulated and nonregulated service and compliance is regulatorily required of each PTA member company.

Embarq Objection: Embarq PA objects to as the question imposes duties beyond those required by the Pennsylvania Public Utility Code and the Commission’s regulations. Embarq PA also objects to this request because it seeks publicly available information.

The PTA Companies state that cost allocations are conducted pursuant to the FCC’s Part 64 regulations, to which each PTA Company is bound to comply. PTA Answer at 17, ¶ 46. This answer is sufficient.

Comcast I-9: Identify the Responding Company’s distribution of average revenue per customer separately for residential and business customers in Pennsylvania, by average revenue per customer, for each of the following and user segments:

- a. Top 10% of customers, as measured by average revenue per customer;
- b. Top 20% of customers, as measured by average revenue per customer;
- c. Top 50% of customers, as measured by average revenue per customer; and
- d. Top 75% of customers, as measured by average revenue per customer.

PTA Objection: The PTA objects to this interrogatory requesting “distribution of average revenue per customer” as ambiguous and vague. The PTA Companies do not maintain data by average revenue per customer, by class, or by the percentage tiers requested by Comcast. Response to the interrogatory would require the undertaking of a special study or unreasonable investigation, causing unreasonable annoyance, oppression, burden, and expense to the PTA member companies. The PTA also objects to the request for average revenue data as irrelevant, outside the scope of this proceeding, it’s not reasonably calculated to lead to the discovery of admissible evidence.

Embarq Objection: Embarq PA objects asked the question imposes duties beyond those required by the Pennsylvania Public Utility Code in the Commission’s regulations. In addition, a response to this question will require Embarq PA to undertake a special study or unreasonable investigation and would therefore be unduly burdensome and oppressive to complete.

Embarq's response is that this interrogatory suffers from fatal definitional vagueness, since "average revenue per customer" can be defined in several ways. In addition, this information is not kept in the normal course of business and would require a special study, making it unduly burdensome. Embarq Answer at 6-7.

PTA argues that it is irrelevant and imposes an undue burden, and that similar albeit less extensive information is already available in response to Verizon's I-2 and 17. PTA Answer at 16, ¶43. These arguments are persuasive, and the Motion to Compel fails.

Comcast I-10: Provide a copy of all responses, including all accompanying materials, each Responding Company provided in answer to the letter dated July 28, 2008 from Rep. Henry A. Waxman, Chairman of the United States House of Representatives Committee on Oversight and Government Reform regarding subsidies offered by the federal Universal Service Fund (USF) High Cost Program for 2006 and 2007. For ease of reference, the letter and associated information can be referenced at the following link:

<http://oversight.house.gov/story.asp?ID=2123>

PTA Objection: The PTA objects to this request for information provided to a federal Legislative Committee with respect to the operations of the federal high cost program as irrelevant, outside the scope of this proceeding, and not reasonably calculated to lead to the discovery of admissible evidence relating to the state USF.

If the terms of disclosure of the House Committee allows the information to be made public, then Comcast may obtain it from the public source made available by the House Committee. However, the PTA member companies will not disclose the process of the U.S. House of Representatives without valid authorization from the Committee on Oversight and Government Reform.

Embarq Objection: Embarq PA objects as the question imposes duties beyond those required by the Pennsylvania Public Utility Code and the Commission's regulations, including but not limited to the definition of "Responding Company" and therefore would cause unreasonable and unnecessary annoyance, oppression, burden and expense. The requested information is irrelevant and not reasonably

calculated to lead to the discovery of admissible evidence. Embarq PA further objects because this information is available to Comcast through the FCC web site to the extent release of it does not violate any confidentiality rules of the Committee.

PTA and Embarq object on the basis that it is wholly inappropriate to use state authority to compel the release of information provided to a Congressional authority related to all states of operation. This is correct. While specific information may be elicited from the RLECs, the package presented to a federal authority is inappropriate here. In addition, PTA points out that much of the actual information has already been provided pursuant to OCA and Verizon interrogatories. PTA Answer at 19, ¶ 51. Accordingly, no further response is necessary here.

THEREFORE,

IT IS ORDERED:

1. That the Comcast Motion to Compel Answers to Interrogatories I-1-4 and I-6-10 and Dismiss Objections of the Pennsylvania Telephone Association is denied consistent with the discussion in this Order.
2. That the Comcast Motion to Compel Answers to Interrogatories I-5 and Dismiss Objections of the Pennsylvania Telephone Association is granted insofar as it seeks three years' (2005-2007) of data from Responding Companies, consistent with the discussion in this Order.
3. That the Comcast Motion to Compel Answers to Interrogatories I-1-4 and I-6-10 and Dismiss Objections of Embarq Pennsylvania is denied consistent with the discussion in this Order.

4. That the Comcast Motion to Compel Answers to Interrogatory I-5 and Dismiss Objections of Embarq Pennsylvania is granted insofar as it seeks three years' (2005-2007) of data from Embarq Pennsylvania, consistent with the discussion in this Order.

Dated: September 30, 2008


Susan D. Colwell
Administrative Law Judge